

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 222 OF 2019
IN
WRIT PETITION NO. 12198 OF 2016**

Zilla Parishad Dhule
Through its Chief Executive Officer
Smt. Vanmathi C.
Age : 30 years, Occu. : Service,
R/o. Z. P. Dhule

.. Applicant

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department
Mantralaya, Mumbai-32.
2. The State of Maharashtra
Through its Secretary,
Women & Child Welfare Department
Mantralaya, Mumbai-32.
3. The Divisional Commissioner,
Nashik Division, Nashik.
4. Vijaya Savalaram Chaure
Age : 49 years, Occu. : Nil
R/o. : Kuher, Tal. Sakri
Dist. Dhule.

.. Respondents

Mr. Rahul S. Pawar, Advocate for the Applicant.
Mr. K. N. Lokhande, AGP for Respondent Nos. 1 to 3.
Mr. S. S. Patil, Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 07th July, 2023.

Date on which order pronounced : 23rd August, 2023.

ORDER :-

. This review application is filed seeking review of the order passed in Writ Petition No. 12198/2016 dated 04.07.2019. Few facts in short are that the respondent No. 4 – original petitioner in the writ petition had filed writ petition in this Court challenging cancellation of her selection on the promotional post of Anganwadi Supervisor and terminating her services. She was appointed as Anganwadi Sevika in the year 1987 and she continued as such till 2006. In the year 2006, Zilla Parishad invited applications for the post of Anganwadi Supervisor from the persons who have served as Anganwadi Sevika. The selection was by conducting written examination and oral interview. Pursuant to the advertisement, Zilla Parishad received applications from Anganwadi Sevikas. The respondent No. 4 came to be selected in the said process to the post of Anganwadi Supervisor.

2. After selection the respondent No. 4 was given an appointment to the said post. One Jijabai Sable filed regular civil suit challenging the appointment of respondent No. 4. The said suit came to be dismissed. The respondent No. 4 completed the period of probation of one year. However, suddenly her services came to be terminated by the present applicant. The respondent No. 4 therefore filed writ petition in this Court. In the said writ petition, the order of termination came to

be set aside observing that the impugned order was in utter disregard of the principles of natural justice.

3. After termination order came to be set aside by this Court. The applicant issued show cause notice and called for explanation as to why her selection should not be cancelled stating that she could not secure minimum required marks in the examination held for the selection to the post of Supervisor. She submitted a reply. The applicant after receipt of explanation cancelled the selection of respondent No. 4 and again terminated her services with effect from 28.05.2012. The respondent No. 4 challenged the said order by filing an appeal before the Divisional Commissioner, Nashik. The said appeal also came to be dismissed. The respondent No. 4 therefore filed Writ Petition No. 8733/2012 for quashing of termination order. This Court remanded the matter to the applicant for taking fresh decision. By way of fresh decision the applicant confirmed the order of termination. The respondent No. 4 again filed writ petition and withdrew subsequently to avail the remedy of filing appeal before the Divisional Commissioner. The Divisional Commissioner in the appeal passed an order partly allowing the appeal and directed the applicant to take decision after calling guidance from the Government. The applicant thereafter made some correspondence and sought clarification as to whether the

condition of minimum marks can be relaxed. The Government declined to grant any such relaxation and thus the termination was again confirmed.

4. The respondent No. 4 thus had approached this Court by way of Writ Petition No. 12198/2016. This Court considered the writ petition. It was the case that, in the examination the respondent No. 4 had secured 36 marks whereas, minimum qualifying marks were 35 marks. The probation period was completed. However, in the year 2009 one lady namely Mangala Gawali made a complaint. On the basis of that complaint re-assessment was done. It was found that, the respondent No. 4 secured 33 marks. It was canvassed before this Court that, as per the Government Circular dated 04.03.2005 re-assessment was permissible only within 15 days of declaration of result of the examination. However, no such application was made within 15 days. The application for re-assessment was made after three years i.e. in the year 2009.

5. It was the stand of the present applicant that respondent No. 4 secured less marks, however, could not give any satisfactory explanation as to why re-assessment was done after three years. This Court had considered the material on record. It was considered that, in the civil suit, this applicant, who was defending suit had filed a written

statement. The allegations in the suit were denied by way of written statement. It was categorically stated that, the process was carried out as per the guidelines laid down in the Government Resolution dated 04.03.2005. From the record it was seen that, in the re-assessment the marks of respondent No. 4 were reduced from 36 to 33. However, in the writ petition the stand was taken that, because the respondent No. 4 secured less marks as found in the re-assessment, she was terminated. This Court specifically observed that, admittedly, no one had applied for re-assessment of the answer-sheet of respondent No. 4 within 15 days. In the civil suit the allegations against respondent No. 4 were denied by the present applicant. This Court specifically considered the aspect that, if the assessment is done by two different persons, there is a chance of variation in the marks and therefore, it was necessary to get the re-assessment done by a person senior to both the assessors. It was observed that, there was no allegation that any objectionable role was played by respondent No. 4 in getting the marks increased in the written test. No any action has been taken against the applicant for manipulating the record and thus the petition was allowed. This judgment and order was passed on 04.07.2019.

6. In the review application filed on 28.08.2019 no specific ground is taken in respect of any error apparent on the face of record. The

ground is only that, since the petition was allowed with all consequential benefits, that would put heavy financial burden on the Zilla Parishad. The second ground taken was that, when the respondent No. 4 was not working with the applicant after reinstatement she would not be entitled for the monetary benefits for the period for which the respondent No. 4 did not work on the principle of 'no work no pay'. Thus, no ground as to error apparent on the face of record is taken. No any ground on merit was raised in the review application. There was no any other material produced along with the review application. Later on a short affidavit came to be filed on 05.12.2019. In this short affidavit it is stated that, the respondent No. 4 had secured only 33 marks and the mark-list dated 03.09.2006 was annexed for the first time. It was stated that, calling the respondent No. 4 for interview even after securing only 33 marks was illegal. Certain communications were placed on record to show that, the respondent No. 4 had secured 33 marks. Thus, when the application for review was filed there was no material placed on record. The material on which now reliance is sought is produced after three months of filing of the application. Even the application itself is filed after delay of 48 days.

7. On this, the applicant – original respondent had made false

statement in the petition that, respondent No. 4 had secured 36 marks. It is vehemently argued that, on the basis of documents annexed to a short affidavit it is clearly seen that, the respondent No. 4 had secured only 33 marks. It is now alleged that, respondent No. 4 has done manipulation.

8. Learned advocate for the applicant relied upon the judgment of the Hon'ble Apex Court in the case of **Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others** reported in **(2005) 4 SCC 741** to submit that the review can be entertained even on the grounds other than that of error apparent on the face of record.

9. Learned advocate for respondent No. 4 i.e. original petitioner vehemently opposed the review application. He submits that, from the record of the original petition it is seen that, for the first time in the minutes of hearing dated 29.11.2013 the marks of the respondent No. 4 are shown to be 33. He further submits that, there was no proper complaint made by any of the persons against the respondent No. 4. For the first time, a complaint was made in 'Lokshahi Din' and it is on that basis the complaint was made and thereafter the re-assessment was done. There was no question of taking cognizance of such complaint which was made as a general complaint in Lokshahi Din.

Lokshahi Din is arranged to hear the grievances in general of common people by the authorities. Such kind of grievances cannot be raised in such public meetings. He submits that the applicant could not point out any error apparent on the face of record when application was filed after delay of 48 days. Nothing was produced on record. Now the material is produced after four months of filing of review application and prays for dismissal of the review application.

10. This Court has carefully gone through the judgment in the writ petition. It is found that, this Court has considered all the material and has decided the writ petition. In the application not a single ground is raised showing as to what is the error apparent on the face of record committed by this Court. Neither the learned advocate could reply this though repeatedly it was asked. It is clear from the record that, the material that is now produced along with short affidavit was not placed before this Court. There is no explanation coming on record as to why no such material was placed when reply was filed in the petition. It is clear that, when review application was filed, there was no such material produced on record. There was no ground taken showing any error apparent on the face of record. The review application is pending since the year 2019 and till now no measures were taken to get the matter decided. On the other hand, the order passed in the writ

petition is not implemented. This Court finds substance in the submission of learned advocate for respondent No. 4 that only to avoid reinstatement this review application was filed and thereafter was not pressed. It is only after the respondent No. 4 filed contempt petition bearing Contempt Petition No. 230/2021 the review is moved. All these things clearly show that for some reason the applicant do not want to reinstate the respondent No. 4 – original petitioner in Writ Petition No. 12198/2016.

11. The applicant could not give any satisfactory reason as to why re-assessment was done after three years of the appointment. Its their own case that they have followed the guidelines of Government Resolution dated 04.03.2005. There is no explanation coming then as to why re-assessment was done after 15 days by flouting the guidelines of the same resolution. Inference can certainly be drawn that the applicant is not willing to reinstate and obey the order passed by this Court in the writ petition. The applicant had clearly taken stand in the civil suit supporting the appointment of this respondent No. 4 at that point. It is not clear as to what made the applicant again to re-assess the marks even after the suit was dismissed on the complaint of some other person. This clearly shows that, only to avoid implementation of the order passed in the writ petition, this application is filed.

12. One more aspect needs to be considered that respondent No. 4 was required to challenge termination order twice. Thrice she was required to approach this Court for redressal of her grievance. Before approaching this Court she was required to approach learned Divisional Commissioner. It is thereafter she could succeed in getting justice by way of judgment dated 04.07.2019 of this Court. Still she is not actually reinstated till now. Thus, this Court finds that, the finding of this application would be abuse of process of law just for the purpose avoiding to implement the order passed in the writ petition. This Court finds that, this is a fit case where the application deserves to be dismissed with costs.

13. Thus, the review application is dismissed with cost of Rs. 25,000/- (Rs. Twenty Five Thousand only).

(KISHORE C. SANT, J.)

PS.B.